



February 16, 2001

Mr. Michael G. Young
Assistant General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR2001-0594

Dear Mr. Young:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144313.

The Texas Department of Health (the "department") received a request for the name, date of birth, address, phone number, and parent's name, of certain child participants of the Special Supplemental Nutrition Program for Women, Infants, and Children ("WIC") in specified areas during a specified time period. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. You have submitted a sample of the responsive information to this office for review.¹

You acknowledge that the department failed to submit its request for a decision on or before the tenth business day following its receipt of the written request for information, as required by section 552.301(b) of the Government Code. This failure results in the presumption that the responsive information is public and must be released. Gov't Code § 552.302. This presumption may be overcome by a demonstration that the information is made confidential by other law, or that third party interests are at issue. Open Records Decision No. 150 (1977). Here, you assert that the responsive information is made confidential by federal regulation and must be withheld under section 552.101 of the Government Code. We will therefore address your arguments.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes, and has been found by this

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

office to encompass information made confidential by federal regulations. *See Rainbow Group, Ltd. v. Texas Employment Comm'n*, 897 S.W.2d 946 (Tex.App.-Austin 1995, writ denied)(court approves office of attorney general finding to withhold, under section 552.101, unemployment compensation identification numbers as made confidential by federal regulations). The WIC program is regulated by Title 7 of the Code of Federal Regulations.

Section 246.26(d) of this title provides for the confidentiality of information obtained by states from applicants and participants in this program, and authorizes release of such information only to specific entities. 7 C.F.R. § 246.26(d). You assert that the department has no contractual obligation to release the information to this requestor. Based on your representations and our review of the submitted information, we conclude that the responsive information was obtained from a participant in the WIC program and that none of the release provisions of the regulation apply to the current request. Therefore, the requested participant name, date of birth, address, phone number, and parent's name information is made confidential by section 246.26(d) of title 7 of the Code of Federal Regulations. This information must be withheld under section 552.101 of the Government Code. We also note that the submitted forms include information which was not requested. As this additional information is not responsive to the request, it need not be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 144313

Encl: Submitted documents

cc: Mr. Chris Houtchens
c/o Michael G. Young
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(w/o enclosures)